

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CLEMONS COMMUNICATIONS, INC.	DOCKET NOS. TCU-03-2 TF-03-48 WRU-03-8-3691
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,
GRANTING WAIVER, APPROVING TARIFF, AND ISSUING CERTIFICATE**

(Issued April 2, 2003)

On February 19, 2003, Clemons Communications, Inc. (Clemons), filed an application for a certificate of public convenience and necessity pursuant to Iowa Code § 476.29 (2003), stating its intention to provide local exchange telecommunications service in the exchanges currently served by Qwest Corporation (Qwest). The application has been identified as Docket No. TCU-03-2. Clemons has provided financial statements and the qualifications of its company officers and has stated it will support a 2-PIC methodology for dialing parity.

Also on February 19, 2003, Clemons filed a proposed local exchange tariff with the Board providing the terms, conditions, and rates for local exchange service in listed exchanges as described in Qwest's exchange maps and boundaries. The proposed tariff has been identified as Docket No. TF-03-48.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant "possesses the technical,

financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest.”

The Board has reviewed Clemons’ application and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. The Board finds that it is in the public interest to approve the application.

Clemons also states that its service area will mirror the service territories of exchanges and service area maps of Qwest as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board that show exchange boundaries. The Board finds that Clemons has complied with the statutory and rule requirements by concurring in the exchange maps of Qwest.

Clemons has requested the Board waive the requirements of 199 IAC 16.5(2) and 22.3(1). The request has been identified as Docket No. WRU-03-8-3691.

Clemons requested a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform system of accounts. Clemons states that it employs an accounting system in accordance with generally accepted accounting principles (GAAP). The Board finds this waiver should be granted, since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

Clemons also requested a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant this waiver based upon Clemons' statement that it will arrange for its customers to be included in the directories published by Qwest in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant a waiver if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on a competitive telecommunications company just beginning to do business in Iowa. It would be an undue hardship on Clemons because other competitive carriers have been granted similar waiver requests. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantially equal protection for health, safety, and welfare provided since the actions waived will be completed under different circumstances.

The Board has reviewed the proposed tariff filed on February 19, 2003, and finds that it substantially complies with Board rules for the filing and processing of tariff pages. The tariff contains rates for both business and residential customers.

Notice was provided to all affected carriers. The Board will approve the tariff effective the date of this order and issue Clemons a certificate of public convenience and necessity concurrent with this order.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by Clemons Communications, Inc., on February 19, 2003, is granted.
2. The concurrence in the maps and boundaries of the exchanges of Qwest Corporation is approved.
3. The waiver of 199 IAC 16.5(2) and 22.3(1), identified as Docket No. WRU-03-8-3691, is granted as described in this order.
4. The tariff filed by Clemons Communications, Inc., on February 19, 2003, identified as Docket No. TF-03-48, is approved effective the date of this order.
5. A certificate, identified as Certificate No. 0267, is being issued to Clemons Communications, Inc., concurrent with this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 2nd day of April, 2003.